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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,881	09/08/2003	Augusto D. Hernandez	08215-549001 / P06-026886	8107
26171 7590 03/09/2009 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER SMITH, RICHARD A	
			ART UNIT 2841	PAPER NUMBER
			NOTIFICATION DATE 03/09/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/656,881	Applicant(s) HERNANDEZ ET AL.	
	Examiner R. Alexander Smith	Art Unit 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-36 is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08 August 2000 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,092,071 A to Simpson, Jr. et al. in view of US 4,916,617 to Norwood and US 3,666,340 to Albanese III.

Simpson, Jr. et al. discloses a position indicator having an input shaft 32 having an angular velocity, a display includes a pointer 23 to indicate a position of a tap changer (column 2, lines 65-72) and the pointer has an angular velocity, a non-linear drive mechanism (figures 2-5), the mechanism includes a Geneva type mechanism and motion includes a dwell (figures 3-5 and associated text), a housing 21 to house the position indicator display, and the pointer being mounted on the drive mechanism (the drive mechanism includes shaft 24).

Simpson, Jr. et al. does not disclose:

a polymer housing,

a one-piece clear polymer cover enclosing the position indicator display and mechanism in the polymer housing,

a hinge connected to the cover and the housing; and

a hand-operated fastening device that secures the one-piece clear polymer cover to the polymer housing such that an interaction between the polymer housing and the one-piece clear polymer cover creates a seal between the one-piece clear polymer cover and the polymer housing,

wherein the cover can be rotated about the hinge, and the cover is secured to the polymer housing at a single access point.

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Norwood '617 discloses (column 6 lines 38-63) a polymer (via the thermosetting resinous material) housing and a one-piece polymer cover enclosing a controller therein in order to provide impact resistance and to protect the controller therein from severe environmental conditions, a hinge (as shown, not labeled) connected to the cover and the housing; and a hand-operated fastening device (not shown, column 6 lines 61-63) that secures the polymer cover to the polymer housing such that an interaction between the polymer housing and the polymer cover creates a seal between the polymer cover and the polymer housing (via O-ring seal 20 positioned within the corresponding groove in the cover), wherein the cover can be rotated about the hinge,

wherein the hand-operated fastening device includes a latch (as described above), and the latch secures the polymer cover to the polymer housing such that the polymer cover can be opened without the use of tools (via being an over-center latching device),

wherein the one-piece polymer cover is secured to the polymer housing at a single access point (via "by an over-center latching device" in column 6 lines 62-63).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the housing for the position indicator, taught by Simpson, Jr. et al., by making the housing a polymer housing, and adding a polymer cover, a hinge, a latch, and an interaction which creates a seal, as suggested by Norwood '617, in order to (a) provide impact resistance and protection from severe environmental conditions, as suggested by Norwood '617, and (b) to protect the pointer from being bumped and damaged, (c) to keep dirt, oil, water, etc.

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from affecting the pointer and the readability of the dial face, and (d) to allow easier servicing of the components of the position indicator when needed.

With respect to a clear cover: Albeanese III discloses an instrument housing for protecting instruments from the environment (column 7 lines 13-35), discloses that the material can be Fiberglas, Plexiglas or other suitable materials and plastics (column 3 lines 57-61, column 5 lines 71-74, column 7 lines 31-35) and shows the cover as one piece and that it is transparent (column 4 lines 65-66).. Therefore, it would have been further been obvious to one of ordinary skill in the art at the time of the invention to modify the cover, taught by Norwood '617, to be a clear cover, as suggested by Albeanese III, in order to allow the user to view the position indicator display without having to open the cover, and also to provide a view of the entire interior for inspection purposes.

Response to Arguments

4. Applicant's arguments filed December 9, 2008 with respect to claim 37 have been fully considered but they are not persuasive.

With respect to the argument in the spanning pages 7-8 regarding Simpson not teaching a cover of any sort or a polymer housing: This argument is not persuasive since Simpson was not relied upon for a teaching of a cover and its associated features as claimed or for a polymer

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housing. Simpson's teaching is drawn to an indicator and its particular type of drive mechanism in order to eliminate hysteresis and improve mechanical movement. Please note the discussions to the housing are limited to column 3 lines 4-6 and 22-24, and column 4 lines 67-71.

Furthermore, older patents rarely disclose details which would have been considered as obvious to one of ordinary skill in the art, particularly when the details were not directly addressing the invention that was claimed. Simpson was addressing an indicator mechanism to improve the accuracy thereof as stated above and this is where Simpson provided details.

With respect to Simpson, Jr. et al. and such a modification would require a substantial redesign of Simpson's indicator: The examiner disagrees. Simpson's teaching is drawn to an indicator and its particular type of drive mechanism in order to eliminate hysteresis and improve mechanical movement. The discussion involving the housing is limited to column 3 lines 4-6 and 22-24, and column 4 lines 67-71. The change to the housing as applied in the rejection would not affect or change the drive mechanism taught by Simpson, Jr.

With respect to Norwood '617 and the module 14, the controller 10, and the display readouts 40 and 42: These arguments involving the module 14, the controller 10 and the display readouts 40 and 42 are not persuasive since the rejection did not use Norwood' 617 for the teachings of its internals. Norwood '617 was used for the teaching of a housing for holding controlling and/or indicating equipment.

With respect to Norwood '617 and argument against making the cover clear given the keypad and display are only accessible once open as argued on pages 11-12: The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case the applicant is arguing Norwood '617 as modified by Albeanese and how it would affect Norwood '617. However, the rejection is based on Simpson, Jr. et al. in view of Norwood '617 and Albeanese III. Therefore Simpson, Jr. et al. as modified by Norwood '617 and Albanese III would not need to be open to access a keypad, and it appears to the examiner that it would have been obvious to one of ordinary skill in the art to make the cover as a clear cover so that the user can read the indicator of Simpson without having to open the cover.

Similar with respect to Albeanese III and the various features of the cover, e.g. being secured at a single access point, etc., these arguments are not persuasive since the cover was used for the teaching that a cover can be clear and not for its other features.

Regarding the transparency being for the plate 27 and not the cover 11 as argued, this is not persuasive since it appears to the examiner that Albeanese III is teaching that the plate 27 or the cover 11 can be transparent. Albeanese III calls the plate 11 a plate throughout and the cover 27 a cover throughout, he does not appear to switch up his wording to indicate that the plate 27 is the cover or that the cover 11 is the plate.

Allowable Subject Matter

5. Claims 1-36 are allowable.
6. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Reasons for Allowance

7. The following is an examiner's statement of reasons for allowance of claims 1-36.

For independent claim 1 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a polymer housing that includes the position indicator display and mechanism wherein a ring formed on an inner surface of the polymer housing is in contact with at least part of the position indicator display and mechanism

in combination with the remaining limitations of the claim.

Claims 2-10, 23-25 and 28-31 recite limitations which, in combination with allowed claim 1, render the dependent claims allowable.

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For independent claim 11 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a modular maximum position indicating subassembly that is secured to the main position indicating assembly with a hand-operable fastener
in combination with the remaining limitations of the claim.

Claims 12-16 recite limitations which, in combination with allowed claim 11, render the dependent claims allowable.

For independent claim 17 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a one-piece limit switch adjuster that holds the limit switch and further includes integrated functionality to constrain the one-piece limit switch adjuster in the polymer housing without fasteners
in combination with the remaining limitations of the claim.

Claims 18-22 recite limitations which, in combination with allowed claim 17, render the dependent claims allowable.

For independent claim 26 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a position indicator display and mechanism, wherein the position indicator mechanism includes a one-piece limit switch adjuster

in combination with the remaining limitations of the claim.

For independent claim 27 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a position indicator display and mechanism, wherein the position indicator mechanism includes a modular maximum position indicator

in combination with the remaining limitations of the claim.

For independent claim 32 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a polymer housing that includes the position indicator display and mechanism, wherein a ring formed on an inner surface of the polymer housing is in contact with at least part of the position indicator display and mechanism

in combination with the remaining limitations of the claim.

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Claim 33 recites limitations which, in combination with allowed claim 32, render the dependent claim allowable.

For independent claim 34 the prior art of record does not disclose or clearly suggest a position indicator, comprising:

a limit switch adjuster that holds the limit switch and further includes integrated functionality to constrain the limit switch adjuster in the polymer housing without fasteners in combination with the remaining limitations of the claim.

Claims 35 and 36 recite limitations which, in combination with allowed claim 34, render the dependent claims allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

8. The prior art made of record is considered pertinent to applicant's disclosure. The prior art cited in PTO-892 disclose related indicators.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on 571-272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R.A.Smith/

March 5, 2009

R. Alexander Smith
Primary Examiner, Art Unit 2841